**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.18694 OF 2005**

**Dated: 05th October, 2005.**

Between:

Mr. Bethamcherla Venkateswarlu … Petitioner

And

1. State of A.P., rep. by its Special Chief Secretary,
   Revenue
   (Ex.II) Department, Secretariat Buildings,
   Saifabad, Hyderabad, and 3 others. … Respondents

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.18694 OF 2005**

**ORDER :**

This writ petition is filed seeking a declaration that the proceedings of the 1st respondent dated 17-8-2005 insofar as permitting the 2nd respondent to shift the shop of the 4th respondent from Krishnamahal Centre Area, Chilakaluripet Municipality to Old Bus-stand Area, Chilakaluripet Municipality as arbitrary and illegal.

The facts, in brief, are as under :

In pursuance of the Notification dated 26-5-2005 issued by the Collector, Guntur District inviting tenders from intending tenderers for grant of lease of right to sell liquor by shop in various localities of Guntur District including Chilakaluripet Municipality, the writ petitioner as well as the fourth respondent submitted their bids. It is not in dispute that the writ petitioner was declared as the successful bidder in respect of the shop in Narsaraopet Centre Area of Chilakaluripet Municipality, whereas the fourth respondent was declared as the successful bidder in respect of Krishnamahal Centre Area of Chilakaluripet Municipality. Apart from the said two shops, one more shop in Kalamandir Centre Area was also notified and awarded to another lessee, with which there is no controversy in this writ petition. It is not in dispute that in the Chilakaluripet Municipality only three shops were notified in the abovesaid three localities and the leases were granted to the respective successful bidders. So far as the writ petitioner is concerned, having been issued the licence in pursuance of the lease granted, he has commenced the business in the premises bearing No.306, Block-6 of Narsaraopet Centre Area of Chilakaluripet Municipality. However, the 4th respondent, it appears, could not secure a suitable premises for establishing a shop at Krishnamahal Centre Area, in respect of which he was granted the lease. In the circumstances, on a request made by him to change the area as notified in the District Gazette from Krishnamahal Centre Area to Old Bus-stand Area, the 2nd respondent – Commissioner of Prohibition & Excise by proceedings dated 20-7-2005 recommended for such shifting and accordingly the 1st respondent issued the impugned proceedings dated 17-8-2005 according permission to shift and establish the shop by the 4th respondent in Old Bus-stand Area instead of Krishnamahal Centre Area of Chilakaluripet Municipality. Aggrieved by the said action, this Writ Petition is filed.

The contention of the writ petitioner is that Narasaraopet Centre Area includes Old Bus-stand Area, in which only one shop was notified. Since the said shop was already put to auction and being the successful bidder, he was granted the lease, permitting the fourth respondent to establish another shop in the said area is impermissible. The petitioner also alleges that the premises in Old Bus-stand Area in which the 4th respondent has been permitted to establish his shop is located at a distance of 150 mts. from his business premises and therefore even while the proposal for such shifting was under consideration, he made a representation raising objections against establishment of shop in the said premises. However the 2nd respondent failed to consider the objections and recommended for establishing the shop by 4th respondent in the old Bus-stand Area. It is also contended that the impugned proceedings permitting the 4th respondent to establish a shop in Old Bus-stand Area i.e., the area/locality other than the area where he was awarded lease namely Krishnamahal Centre Area, being contrary to the Rules issued in G.O.Ms.No.998, dated 24-5-2005 is arbitrary and illegal.

On behalf of the respondents 1 to 3 a counter-affidavit has been filed stating that under the impugned proceedings, the 4th respondent was permitted to change the area from Krishnamahal Centre Area to Old Bus-stand Centre Area as both the centres fall in Ward No.3. However, the 4th respondent established the shop opposite to Old Bus-stand Area in Door No.7-392 which is in Ward No.18. It is clear from the counter-affidavit that whereas Krishnamahal Centre Area falls in Ward No.3, the premises bearing No.7-392 falls in Ward No.18, at a distance of 150 mts from the petitioner's shop. However, it is contended that in exercise of the power conferred under Section 68-B of the A.P. Excise Act, 1968, the 1st respondent granted relaxation in respect of Rule 29 of the Rules under G.O.Ms.No.998, dated 24-5-2005 which prohibits shifting of the shop beyond the area/locality where it was originally established. Therefore, the impugned proceedings dated 17-8-2005 permitting shifting and establishment of 24 shops, including the shop of the fourth respondent, outside the area/locality where they were originally notified is unassailable.

The 4th respondent filed a separate counter in the same lines and stating that having paid the entire licence fee he submitted the particulars of the licensed premises at Door No.8-156 near Krishnamahal Centre Area, however since there was an opposition by the local people as suggested by the Department, he was constrained to make a representation requesting to permit him to establish the shop at Old Bus-stand Area at premises No.7-392. The objection raised by the writ petitioner alleging that it is situated within 150 mts. from his shop is untenable and unwarranted and the writ petition being misconceived is liable to be dismissed.

I have heard the learned Counsel for both the parties and perused the material on record.

It is to be noted that in exercise of the powers conferred by Section 72 read with Sections 17, 28, and 29 of the A.P. Excise Act, 1968, the Governor of Andhra Pradesh made the Rules called The A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules') which were issued under G.O.Rt.No.998, Revenue (Ex.II) Department, dated 24-5-2005.

Rules 3, 4 and 5 of the said Rules which provide for grant of Lease of Right to Sell Indian Liquor and Foreign Liquor and for Establishment of Shops run as under :

> ***"3. Lease of Right to sell Indian Liquor and Foreign Liquor :***
>
> *Subject to the provisions of these rules the grant of lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public after due notification. The lease shall be for a period of one year or part thereof.*
>
> *Provided that where the Commissioner considers it expedient to grant the lease of right to sell Indian Liquor and Foreign Liquor by shop in any other manner, he shall for the reasons to be recorded in writing, do so.*
>
> ***4. Establishment of Shops:-***
>
> *The Commissioner of Proh. & Excise having due regard to requirement, public order, health, safety and other factors as thinks fit, may fix the number of shops to be established in an area/locality before the publication of the Auction Notice under Rule 5.*

***5. Auction Notice :***

*(1) Where it is proposed to grant the lease for sale of Indian Liquor and Foreign Liquor by shop a notice of the proposed auction containing the particulars mentioned in sub-rule (2) shall be published, at least (7) seven days in advance of the date of auction, by the Collector of the District in the District Gazette or in such other manner as the Collector may deem fit.*

*(2) The auction notice shall contain the following particulars :*

i. *Serial Number and the name of the area / locality where the shop will be established.*

ii. *The last date, time and place for receipt of tenders;*

iii. *The place of auction with time and date;*

iv. *The conditions governing the auction;*

v. *The lease period and*

vi. *Any other matter which may be considered necessary by the auctioning authority."*

A combined reading of the above Rules makes it clear that the lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public. Before issuing such auction notice, the Commissioner of Prohibition & Excise has to fix the number of shops to be established in an area/locality. It is also relevant to note that Rule 5 of the Rules specifies the particulars to be mentioned in the auction notice which include the name of the area/locality where the shop will be established.

In the case on hand, it is not in dispute that the 2nd respondent – Commissioner of Prohibition & Excise fixed the number of shops to be established in Chilakaluripet Municipality. Admittedly, three shops were notified viz., one shop each at Krishnamahal Centre Area, Kalamandir Centre Area and Narasaraopet Centre Area. No shop was notified in Old Bus-stand Area. However, under the impugned proceedings, the fourth respondent who was granted lease in respect of the shop at Krishnamahal Centre Area has been permitted to establish his shop in Old Bus-stand Area which is not admittedly notified by the 2nd respondent. The

learned Counsel for the petitioner has also placed before this Court a copy of the licence granted in favour of one Pamidi Prasad, S/o. Subba Rao for the lease year 2002-03 whereunder he was permitted to sell liquor in the premises bearing Door No.7-392, Narsaaraopet Centre, Chilakaluripet. The learned Counsel submits that now the 4th respondent is permitted to establish the shop in the same premises i.e., premises bearing No.7-392, which as can be seen from the licence for the year 2002-03 is situated only in Narasaraopet Centre Area. Thus, the learned Counsel contends that such course is not permissible since the lease of right to sell liquor by Shop by way of public auction can be granted only in respect of the shops fixed by the Commissioner of Prohibition & Excise in the particular area/locality notified and in no other area/locality.

On a combined reading of the Rules extracted above, I do find force in the contention raised by the learned Counsel for the writ petitioner. However, the learned Government Pleader submits that the areas for Narasaraopet Centre, Krishnamahal Centre and Kalamandir Centre have no specific boundaries and as per the delimitation of the election wards notified recently both Krishnamahal Area Centre and Old Bus-stand Area Centre fall in Ward No.3. The learned Government Pleader has also placed before this Court two letters addressed by the Commissioner of Chilakaluripet Municipality dated 12-9-2005 and 16-9-2005 which show that the abovesaid two areas are situated in 3rd ward of Chilakaluripet Municipality. Hence, I am not inclined to enter into the controversy whether in the case on hand the permission granted by the respondents 1 and 2 to the 4th respondent to establish his shop in Old Bus-stand Area is beyond the area/locality notified in contravention of the Rules 3 to 5 of the Rules.

In the absence of any specific material to show that the District Collector while fixing the number of shops area-wise in terms of the Rule 4 of the Rules has taken the municipal wards into consideration, it is neither possible nor proper for this Court to record any finding that the shop established by the 4th respondent is located in an area other than the area, in respect of which he was granted the lease. Instead, I deem it appropriate to dispose of the writ petition with a direction to the 2nd respondent – Commissioner of Prohibition & Excise to enquire into the objections

raised by the writ petitioner as to the location of the shop by the 4th respondent and to pass appropriate orders in accordance with law after calling the necessary reports/remarks from all the concerned departments with regard to the allegation that the premises bearing Door No.7-392 falls within Narasaraopet Centre Area. Needless to mention that due opportunity shall be given to both the writ petitioner as well as the fourth respondent to putforth their respective versions. Such enquiry shall be completed and appropriate orders shall be passed as expeditiously as possible preferably within a period of six (6) weeks from the date of receipt of this order. Till such time, the interim order passed by this Court dated 14-9-2005 whereunder it was ordered that in case the 4th respondent is running the shop as per the impugned order as on that date he shall not be disturbed, shall remain in operation.

The Writ Petition is accordingly disposed of. No costs.

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5th October, 2005.

Note:- Issue in CC in three days.

(B/O)

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